

Final

**RHODE ISLAND SUPREME COURT  
ETHICS ADVISORY PANEL  
OPINION NO. 97-17, REQUEST NO. 723  
Issued September 11, 1997**

**Facts:**

After settling a personal injury case on behalf of a client, the inquiring attorney paid out of the settlement funds all outstanding medical bills except a physician's bill in which there is a dispute about the amount owed. The physician is a participating physician in the client's health insurance program. The physician, who had been paid by the health insurer to the extent allowed under his/her agreement with the insurer, claims that the client owes the balance of the fee for his/her services which the health insurer did not pay, asserting that balance-billing is permitted when there is third party liability. The client asserts that he/she is only liable for his/her deductible under the policy and for several non-covered items. The inquiring attorney has withheld the full amount claimed by the physician for over a year without resolution. He/she attempted several times to engage the physician and his/her attorney in negotiations, but they have failed to respond. The inquiring attorney recently notified the physician that he/she will disburse to the client the entire amount being withheld unless by a specified date the physician either accepts the lesser amount as payment in full, or commences a lawsuit to protect his/her interest in the amount claimed.

**Issue Presented:**

The inquiring attorney asks whether he/she may hold the amount that the client agrees he/she owes the physician and forward the remainder of the money to the client, or whether he/she should disburse the entire amount to the client with notice to the physician.

**Opinion:**

The inquiring attorney has an obligation under Rule 1.15(b) of the Rules of Professional Conduct to protect the funds which are in dispute by either retaining them in his/her trust account until resolution or if after a reasonable time no resolution is reached, paying them into the court registry in an interpleader action, with a full accounting to the interested parties.

**Reasoning:**

Whether balance-billing by physicians is permitted by the terms of the agreement between the health insurer and the physician and whether the client is required to pay the balance under the terms of the client's agreement with the health insurer are questions of substantive law outside the area of legal ethics and discipline. Therefore the Panel does not express a view on those matters.





The rule applicable to this inquiry is Rule 1.15(b) which states:

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third persons, shall promptly render a full accounting regarding such property.

In Ethics Advisory Panel General Informational Op. No. 7 (1997) the Panel recently discussed a lawyer's obligations under Rule 1.15(b) in the disbursement of a client's settlement funds in which third persons such as medical providers have an interest. The rationale set forth in General Informational Opinion No. 7 is applicable to the instant request, and the Panel refers the inquiring attorney to that opinion.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.